

**STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION**

**IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
DIVISION FOR THE PURPOSE OF  
CONSIDERING:**

**APPLICATION OF NEARBURG EXPLORATION  
COMPANY, L.L.C. FOR AN UNORTHODOX GAS  
WELL LOCATION, EDDY COUNTY, NEW MEXICO.**

**Case No. 12661**

**APPLICATION OF NEARBURG EXPLORATION  
COMPANY, L.L.C. FOR COMPULSORY POOLING,  
EDDY COUNTY, NEW MEXICO.**

**Case No. 12662**

**Order No. R-11671**

**ORDER OF THE DIVISION**

**BY THE DIVISION:**

These cases came on for hearing at 8:15 a.m. on May 17, 2001, at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this 15th day of October, 2001, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

**FINDS THAT:**

(1) Due public notice has been given, and the Division has jurisdiction of these cases and the subject matter.

(2) In **Case No. 12662**, Nearburg Exploration Company, L.L.C. ("Nearburg"), seeks an order pooling all uncommitted mineral interests from the surface to the base of the Morrow formation underlying the S/2 of Section 26, Township 18 South, Range 24 East, NMPM, Eddy County, New Mexico, to form a standard 320-acre lay-down gas spacing and proration unit for any and all formations and/or pools developed on 320-acre spacing within that vertical extent, which presently include the Undesignated Penasco Draw San Andres-Yeso (Associated) Pool, Undesignated Penasco Draw-Permo Pennsylvanian Gas Pool, Undesignated Penasco Draw-Morrow Gas Pool, and Undesignated Boyd-Morrow Gas Pool. This unit is to be dedicated to Nearburg's proposed Poco Mesa "26" State Com. Well No. 1 to be drilled at an unorthodox gas well location, which is the subject of **Case No. 12661**, 1980 feet from the South line and 2400 feet from the West line (Unit K) of Section 26,

Township 18 South, Range 24 East, NMPM, Eddy County, New Mexico.

(3) At the hearing Cases No. 12661 and 12662 were consolidated for purposes of testimony and the issuance of a single order.

(4) The rules governing 320-acre spacing within the proposed vertical limits sought by Nearburg to be force pooled in this case include:

- (a) Rule 2 (b) of the "*General Rules and Regulations for the Associated Oil and Gas Pools of Northwest and Southeast New Mexico/Special Rules and Regulations for the Penasco Draw San Andres-Yeso (Associated) Pool*," as promulgated by Division Order No. R-5353, as amended, for the San Andres and Yeso formations; and
- (b) Division Rule 104.C (2) (a) for the gas-bearing intervals from the top of the Wolfcamp formation to the base of the Morrow formation.

(5) The primary objective for this well is the Morrow formation. From the geological evidence presented, which is based on "3-D" seismic, the proposed unorthodox gas well location will be at a more favorable geologic position within the Morrow formation than a well drilled at a location considered to be standard within the S/2 of Section 26.

(6) The applicant further requests that Nearburg Producing Company, a corporation that operates the various wells owned by Nearburg Exploration Company, L.L.C., be designated operator of the subject well and unit.

(7) Two or more separately owned tracts are embraced within this 320-acre unit, and/or there are owners of royalty interests and/or undivided interests in oil and gas minerals in one or more tracts included in the unit which are separately owned.

(8) Applicant is an owner of an oil and gas working interest within the unit and therefore has the right to develop this acreage and recover gas underlying the same.

(9) There are interest owners in the proposed unit that have not agreed to pool their interests.

(10) No interested or affected party appeared at the hearing in opposition to either case.

(11) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste, and afford to the owner of each interest in this 320-acre gas spacing unit the opportunity to recover or receive without unnecessary expense its just and fair share of the gas underlying this unit, the application should be approved by pooling all mineral interests, whatever they may be, within this unit.

(12) Nearburg Producing Company should be designated the operator of the proposed well and 320-acre unit.

(13) After pooling, uncommitted working interest owners are referred to as non-consenting working interest owners. ("Uncommitted working interest owners" are owners of working interests within the unit, including unleased mineral interests, who are not parties to an operating agreement governing the unit.) Any non-consenting working interest owner should be afforded the opportunity to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production.

(14) Any non-consenting working interest owner who does not pay its share of estimated well costs should have withheld from production its share of reasonable well costs plus an additional 200% thereof as a reasonable charge for the risk involved in drilling the well.

(15) Any non-consenting interest owner should be afforded the opportunity to object to the actual well costs, but actual well costs should be adopted as the reasonable well costs in the absence of such objection.

(16) Following determination of reasonable well costs, any non-consenting working interest owner who has paid its share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

(17) Reasonable charges for supervision (combined fixed rates) should be fixed at \$5,400.00 per month while drilling and \$ 540.00 per month while producing, provided that these rates should be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations*." The operator should be authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(18) Except as noted in Finding Paragraphs No. (14) and (17) above, all proceeds

from production from this well that are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.

**IT IS THEREFORE ORDERED THAT:**

(1) Pursuant to the application of Nearburg Exploration Company, L.L.C. ("Nearburg"), in **Case No. 12662**, all uncommitted mineral interests, whatever they may be, from the surface to the base of the Morrow formation underlying the S/2 of Section 26, Township 18 South, Range 34 East, NMPM, Eddy County, New Mexico, are hereby pooled to form a standard 320-acre lay-down gas spacing and proration unit for any and all formations and/or pools developed on 320-acre spacing within that vertical extent, which presently include the Undesignated Penasco Draw San Andres-Yeso (Associated) Pool, Undesignated Penasco Draw-Permo Pennsylvanian Gas Pool, Undesignated Penasco Draw-Morrow Gas Pool, and Undesignated Boyd-Morrow Gas Pool.

(2) Pursuant to Nearburg's application in **Case No. 12661**, this unit is to be dedicated to its proposed Poco Mesa "26" State Com. Well No. 1 to be drilled at an unorthodox gas well location, which is hereby approved, 1980 feet from the South line and 2400 feet from the West line (Unit K) of Section 26.

(3) Nearburg Producing Company is hereby designated the operator of the subject 320-acre unit and proposed well.

(4) The operator shall commence drilling the proposed well on or before December 31, 2001, and shall thereafter continue drilling the well with due diligence in order to test the Morrow formation.

(5) In the event the operator does not commence drilling the proposed well on or before December 31, 2001, Ordering Paragraph (1) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause.

(6) Should the proposed well not be drilled to completion, or be abandoned, within 120 days after commencement thereof, the operator shall appear before the Division Director and show cause why Ordering Paragraph (1) should not be rescinded.

(7) After pooling, uncommitted working interest owners are referred to as non-consenting working interest owners. After the effective date of this order, the operator shall furnish the Division and each known non-consenting working interest owner in the subject 320-acre unit an itemized schedule of estimated well costs.

(8) Within 30 days from the date the schedule of estimated well costs is furnished, any non-consenting working interest owner shall have the right to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production as hereinafter provided, and any such owner who pays its share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(9) The operator shall furnish the Division and each known non-consenting working interest owner an itemized schedule of actual well costs within 90 days following completion of the well. If no objection to the actual well costs is received by the Division, and the Division has not objected within 45 days following receipt of the schedule, the actual well costs shall be deemed to be the reasonable well costs; provided, however, that if there is an objection to actual well costs within the 45-day period, the Division will determine reasonable well costs after public notice and hearing.

(10) Within 60 days following determination of reasonable well costs, any non-consenting working interest owner who has paid its share of estimated costs in advance as provided above shall pay to the operator its share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator its share of the amount that estimated well costs exceed reasonable well costs.

(11) The operator is hereby authorized to withhold the following costs and charges from production:

- (a) the proportionate share of reasonable well costs attributable to each non-consenting working interest owner who has not paid its share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished; and
- (b) as a charge for the risk involved in drilling the well, 200% of the above costs.

(12) The operator shall distribute the costs and charges withheld from production, proportionately, to the parties who advanced the well costs.

(13) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$5,400.00 per month while drilling and \$ 540.00 per month while producing, provided that these rates shall be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled

*"Accounting Procedure-Joint Operations."* The operator is authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(14) Except as provided in Ordering Paragraphs No. (11) and (14) above, all proceeds from production from the well that are not disbursed for any reason shall be placed in escrow in Lea County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership. The operator shall notify the Division of the name and address of the escrow agent within 30 days from the date of first deposit with the escrow agent.

(15) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under this order. Any well costs or charges that are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(16) Should all the parties to this compulsory pooling order reach voluntary agreement subsequent to entry of this order, the forced pooling provisions of this order shall thereafter be of no further effect.

(17) The operator of the unit and well shall notify the Division in writing of the subsequent voluntary agreement of all parties subject to the force pooling provisions of this order.

(18) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



SEAL

STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION

  
LORI WROTENBERY  
Director